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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/651,059	08/28/2003	Dominic Anthony Viscomi	Viscomi-Viscomi	9001
39570	7590	04/26/2005	EXAMINER	
DOMINIC A. VISCOMI			WILSON, JOHN J	
1868 FELICITY LANE			ART UNIT	
HELLERTOWN, PA 18055			PAPER NUMBER	

3732

DATE MAILED: 04/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/651,059

Applicant(s)

VISCOMI ET AL.

Examiner

John J. Wilson

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 28 August 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-15 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 August 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 8/28/03.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 6 and 14 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claim 6, line 2, "said appendage", in claim 14, line 1 "said predetermined number of notches" and in line 2, "said contiguous appendage" all lack proper antecedent basis within the claims.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4-9 and 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curran (1669231). Curran shows a flat flexible body 20, Fig. 1, hole 20a within the confines of the body and a notch 20f on the border. To call the border an inferior border is merely terminology and/or intended use. The alignment of the hole and the notch is an obvious matter of choice in the perspective of viewing angle between the hole and notch to one of ordinary skill in the art. As to claim 2, see medial appendage 20h. As to claim 4, Curran shows several holes 20a. The hole closest to the center is held to be "generally" located near

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the center. As to claim 5, Curran does not show a hole having a ovoid shape. To use an ovoid hole is an obvious matter of choice in the non-critical shape of a known element to one of ordinary skill in the art. As to claim 7, the notch 20a comprises means for separating. To separate through one of the apertures is merely a matter of intended use of the shown structure, that is the intended forces applied, to one of ordinary skill in the art. As to claim 15, it is noted that step f of that claim is not actually claiming a method step, instead is merely a statement of what can happen if a method step were to be preformed, and as such, is held to be an obvious matter of choice in the use of the shown structure capable of functioning as claimed.

Claim 3 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curran (1669231) as applied to claim 1 above, and further in view of Meyer (5788487). Curran shows the structure as described above, and further teaches using metal, page 1, line 104, however, does not show the use of stainless steel. Meyer teaches using stainless steel, column 2, lines 55-59. It would be obvious to one of ordinary skill in the art to modify Curran to include using stainless steel as shown by Meyer in order to use a known biologically safe material.

Claims 7-9, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curran (US 1669231) in view of Lazarus (US 3921299). Curran shows a flat flexible body 20, Fig. 1, having an aperture 20a. Curran does not show means for separating through a predetermined location of the aperture. Lazarus shows means for separating 118, Fig. 20, which is capable of functioning as claimed. To use the shown structure as claimed is merely a matter of intended use of the known structure to one of ordinary skill in the art. As to claim 8,

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see appendage 20 h of Curran. To call the location of this appendage superior is an obvious matter of choice in terminology and/or intended use to the skilled artisan. As to claim 9, the specific shape of the appendage is an obvious matter of choice in the shape of a known element to one of ordinary skill in the art. As to claim 11, the hole closest to the center is held to be “generally” located near the center. As to claim 12, to use an ovoid hole is an obvious matter of choice in the non-critical shape of a known element to one of ordinary skill in the art.

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Curran (US 1669231) in view of Lazarus (US 3921299) as applied to claim 7 above, and further in view of Meyer (US 5788487). Curran shows the structure as described above, and further teaches using metal, page 1, line 104, however, the above combination does not show the use of stainless steel. Meyer teaches using stainless steel, column 2, lines 55-59. It would be obvious to one of ordinary skill in the art to modify the above combination to include using stainless steel as shown by Meyer in order to use a known biologically safe material.

### ***Drawings***

The drawings filed August 28, 2003 have been found to be acceptable by the examiner.

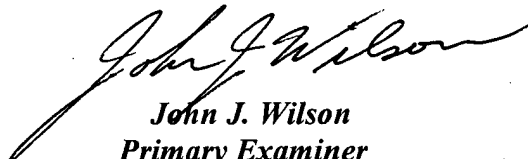
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John J. Wilson whose telephone number is (571) 272-4722. The examiner can normally be reached on Monday through Thursday.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin P. Shaver, can be reached at (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**John J. Wilson**  
**Primary Examiner**  
**Art Unit 3732**

jjw  
April 22, 2005